IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.7130 OF 2005

Sunil Atmaram More ...Applicant
vs.
State of Maharashtra ...Respondent

Mr.Milan Desai with Mr.P.N.Wagh and Mr.V.B.Sudade for the Applicant
Ms M.M.Deshmukh, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 26,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. The prayer made in this Application is for transfer of the pending trial before the learned Additional Sessions Judge.

2. The transfer is sought broadly on the following grounds :

i) Though there is no provision in law, the learned Judge directed that a copy of the entire charge sheet should be made available to the prosecutrix.

ii) The learned Judge is showing inclination towards the prosecution.

iii) The learned Judge has not permitted certain questions to be asked to the prosecutrix which ought to have been allowed.

iv) The learned Judge is not putting the questions to the witnesses correctly.

3. The submission of the learned Counsel for the Applicant is that all along during the hearing the learned Judge is showing inclination towards the prosecution and the said fact is very clear from the remarks offered by the learned Judge. He has placed reliance on the decision of this Court reported in 2004 All MR (Cri) page 2951 (Nilesh Jap Daru vs. State of Maharashtra) in which it is held that in considering the expediency of directing a transfer for the ends of justice, it is essential to decide not merely the question whether there has been any real bias in mind of Judge but also further question whether the incidents happened in court create in mind of an accused a reasonable apprehension that he may not have a fair and impartial trial.

4. I have considered the submissions. I have also perused the averments made in the application. The grievance of the Applicant appears to be that some of the questions which are relevant were not permitted to be asked during the cross examination of the prosecutrix. Another grievance is that the questions which ought not to have been permitted were permitted to be asked by the prosecutor. Perusal of the application shows that the grievance is that the learned Judge has passed erroneous orders while dealing with the question of

relevancy of the questions. Even assuming that the learned Judge has passed erroneous orders, that by itself is no ground for seeking transfer. Merely because the learned Judge during the course of hearing has made some observations which may show inclination of the learned Judge at that particular stage, transfer cannot be made. It is not out of place to mention that with a view to ensure that the Advocates are able to put up the cases of their respective clients properly, the Judges very often do keep on expressing their tentative opinions formed at a particular stage during the course of hearing. The direction to give entire charge sheet to the prosecutrix cannot be said to be illegal. After having heard the learned Counsel for the Applicant and after perusing the averments made in the application, I find that no case is made out for transfer.

5. Hence I pass the following order :

i) Application is rejected.

ii) However, it is made clear that I have not made any adjudication on legality or validity of the orders of the learned Judge of allowing certain questions to be asked and declining permission to ask certain questions. I have considered the averments made in the application only for considering the limited prayer for transfer. The observations made herein shall not be construed as any adjudication on any

issue on merits of the pending trial.

JUDGE